

Agenda

Item #1



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 25, 2010

Re: Request by Gayle Green concerning Sen. Elizabeth Mitchell

Gayle Green of Windsor requests that the Commission consider whether 2010 gubernatorial candidate Elizabeth Mitchell has violated the Code of Fair Campaign Practices because of the content of her campaign's first television advertisement. She believes Sen. Mitchell is using public campaign funds for "dirty politics." Ms. Green also questions whether the advertisement was closed-captioned.

Content of Advertisement

Candidates have a First Amendment right to decide on the content of their advertisements. As a government agency, the Commission cannot punish speech merely because some members of the public may find it objectionable.

The Code of Fair Campaign Practices is a voluntary code. The Commission is assigned the duties of distributing the code to candidates and receiving the signed form from candidates who subscribe to the code. The statutes setting forth these duties (attached) do not authorize the Commission to investigate violations. Previously, the Commission has determined that it lacks authority to take any enforcement action against candidates who violate the code.

Participating in the Maine Clean Election Act program does not place any additional conditions on candidates with regard to the content of their campaign communications. The Commission staff recommends taking no action on this allegation.

Closed-Captioning Requirement

Maine Clean Election Act candidates are required by 21-A M.R.S.A. § 1125(6) to include closed-captioning in television advertisements. The Mitchell campaign states that the campaign's first television advertisement includes the required captioning. My understanding is that, in most instances, a television viewer must press a button on their television or remote control in order to activate closed-captioning. Since Ms. Green has not provided any specific information concerning the lack of closed-captioning, the Commission staff recommends taking no action on this allegation.

Wayne, Jonathan

From: Gayle Green [ggreen@roadrunner.com]
Sent: Thursday, October 21, 2010 5:50 PM
To: Wayne, Jonathan
Subject: Libby Mitchell

As a voting , tax paying citizen of Maine, I would like to file a complaint about Libby Mitchell using public funds and running political ads that I consider dirty politics. The first ad she was running indicated Paul LePage was against any preservation of Maine's environment. I beleive any candidate accepting public funds is violating the ethics Commission rules by publicizing material as factual, without proof. The majority of her ads are criticizing her opponent, and very few are based on the merits of her own qualifications. Also, I don't remember the ads as being closed caption, which is another requirement for running ads against an opponent when paying with public funds. I also feel she has violated the Maine Code Of Fair Campaign Practices, particularly paragraphs 3, 4, 7, and 8.

**Gayle Green
858 Ridge Rd
Windsor, ME 04363**

phone 297-445-2149

2010 Election Year

RECEIVED

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

AUG 10 2009



MAINE ETHICS COMMISSION

Website: www.maine.gov/ethics

Phone: 207-287-4179

Fax: 207-287-6775

2010 MAINE CODE OF FAIR CAMPAIGN PRACTICES

(21-A M.R.S.A. § 1101(2))

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor.

I shall uphold the right of every qualified voter to free and equal participation in the election process.

I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign.

I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin.

I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters.

I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code.

I, the undersigned candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

9/10/09
Date

Elizabeth A. Mitchell
Candidate's Signature

Governor
Office Sought and District

Elizabeth A. Mitchell
Printed Name

BERNSTEIN SHUR

COUNSELORS AT LAW

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100 Middle Street
PO Box 9729
Portland, ME 04104-5029

Kate R. Knox
207 228-7229 direct
kknox@bernsteinsbur.com

October 25, 2010

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

**RE: RESPONSE TO COMPLAINT FILED BY GAYLE GREEN AGAINST THE
MITCHELL FOR GOVERNOR CAMPAIGN**

Dear Mr. Wayne:

On behalf of my client, the Mitchell for Governor Campaign (the "Campaign"), please accept the following response to the complaint filed by Gayle Green with the Commission dated October 21, 2010.

Although it is not entirely clear from her email complaint, it appears that Ms. Greene is accusing the Campaign of two violations of Maine Ethics Laws. Both allegations appear to stem from the "Environment" Ad which features Libby Mitchell talking about Paul LePage's environmental positions in contrast with her own.¹

1. The Campaign Has Not Violated the Maine Code of Fair Campaign Practices.

Libby Mitchell takes the Maine Code of Fair Campaign Practices (the "Code") seriously. She voluntarily signed the Code in August of 2009 and has complied with all of its provisions throughout both her primary and general election campaigns. Ms. Greene seems to imply that the Environment Ad violates the Code because it draws distinctions between Mr. LePage's stance on environmental protections and Ms. Mitchell's – yet she fails to make any specific claims about why the Ad violates the Code. The Campaign stands by the Ad and believes wholeheartedly that the claims made are truthful, provable and relevant to the campaign. No material in the Ad has been falsified, misrepresents or distorts the facts.

¹ Ms. Greene refers to the Campaign's "first ad" with then goes on to describe Mr. LePage's stance on environmental issues. I am deducing that Ms. Greene is referring to the ad entitled "Environment" although it was not the first ad run by the Campaign.

October 25, 2010

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Finally, the Commission itself directs candidates not only that subscription to the Code is voluntary but that "the [c]ommission is not authorized to take action against candidates who violate the Code." (Guidebook for 2010 Gubernatorial Candidates, Maine Clean Election Candidates, page 5). Ms. Greene's request that the Commission consider any such potential violations is misplaced.

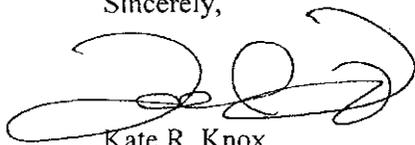
2. All Television Advertisements Produced and Distributed By the Campaign Contain The Required Closed Captioning.

Maine Clean Elections Candidates are required to closed-caption their television advertisements pursuant to 21-A M.R.S.A. § 1125(6). The Campaign is aware of this requirement and has closed captioned all television ads in compliance with this provision. Despite the production of closed-captioned advertising, it appears there have been occasions where the broadcast stations themselves have not always broadcast ads with the closed-captioning activated. When brought to our attention in the primary, we worked directly with all the television stations to ensure our ads were being broadcast properly. To our knowledge, this happened to several campaigns in the primary season but has not recurred in the general election.

If Ms. Greene can point to a specific date and time where she did not see closed-captioning, the Campaign is happy to contact the television station to determine whether proper formatting was being utilized. It is important for Ms. Greene to understand that while the Campaign makes every effort to ensure the ads are broadcast properly, the statutory provision cited above only requires that we provide the stations which properly captioned ads – which we have done. Failure to properly broadcast the ads needs to be addressed directly with the television station itself.

The Campaign remains confident that the Environment Ad meets all current statutory requirements and in addition, complies with the Code.

Sincerely,



Kate R. Knox
Legal Counsel
Mitchell for Governor

Wayne, Jonathan

From: Kate Knox [kknox@bernsteinshur.com]
Sent: Monday, October 25, 2010 1:59 PM
To: Wayne, Jonathan
Subject: Closed Captioning

Jonathan

I was hoping to have this earlier today – but just received it this afternoon. If it is helpful to the Commission, below please find confirmation from our media buyer and the closed captioning company that the “Environment” Ad was properly captioned before being sent to the stations.

Kate

From: Dan Pohlig [mailto:dan@campaigngroup.tv]
Sent: Monday, October 25, 2010 1:38 PM
To: Kate Knox
Subject: [Fwd: RE: MIT1004ENV OPEN CAP FOR REVIEW; 468711]

Kate,

See below. This is the response that I got from the company that captions and digitally delivers our spots. The Environment spot is coded as "MIT1004ENV". And according to them it is captioned.

Dan

----- Original Message -----

Subject:RE: MIT1004ENV OPEN CAP FOR REVIEW; 468711
Date:Mon, 25 Oct 2010 12:30:40 -0500
From:Bridget De La Torre <BDelatorre@dgite.com>
To:Dan Pohlig <dan@campaigngroup.tv>
CC:Christine Thompson <CThompson@dgite.com>, Avi Saltzman <ASaltzman@dgite.com>
References:<6A28C96CDCBC5041B7C32A99E5AB8536BF0D60071E@IRVMAIL1.dgs.dgsystems.com>
<4C8E67AC.8060507@campaigngroup.tv> <4CC58764.8080502@campaigngroup.tv>
<EC1DEB9B45361E49A31F80277D99724C10295F9192@IRVMAIL1.dgs.dgsystems.com>

Hi Dan,

I apologize for the delay in getting back to you on this. Our media techs took a look at the spot that is on our server and it is in fact Closed Captioned.

Thanks!
Bridget

BRIDGET DE LA TORRE | client manager
600 Third Avenue, 28th Floor | New York, NY 10016

p. 646.344.3421 m. 646.245.1171 f. 212.972.8250

www.DGit.com



**Maine Revised Statute Title 21-A, Chapter 13:
CAMPAIGN REPORTS AND FINANCES**

Subchapter 5: MAINE CODE OF FAIR CAMPAIGN PRACTICES

21-A §1101. MAINE CODE OF FAIR CAMPAIGN PRACTICES

1. Distribution to candidates. At the time a candidate for the office of Governor, the Senate or the House of Representatives registers with the commission as required under section 1013-A, the commission shall give the candidate a form containing a copy of the Maine Code of Fair Campaign Practices established in this subchapter. The commission shall, at that time, inform the candidate that subscription to the code is voluntary. For the purposes of this subchapter, "code" means the Maine Code of Fair Campaign Practices.

2. The code form. The code, printed on the form provided to candidates under subsection 1, must read as follows:

"Maine Code of Fair Campaign Practices

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor.

I shall uphold the right of every qualified voter to free and equal participation in the election process.

I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign.

I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin.

I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters.

I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code.

I, the undersigned, candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

Candidate for Public Office"

21-A §1102. PRINTING OF CODE FORMS

The commission shall print, or cause to be printed, copies of the code for distribution to registered candidates.

21-A §1103. ACCEPTANCE OF COMPLETED FORMS

The commission shall accept, at all times prior to the election, completed code forms that are properly subscribed to by a candidate

21-A §1104. PUBLIC RECORDS

The commission shall retain for public inspection all completed code forms accepted by the commission under section 1103. A code subscribed to by a candidate is a public record under Title 1, section 408.

21-A §1105. SUBSCRIPTION TO CODE VOLUNTARY

In no event may a candidate be required to subscribe to or endorse the code.

HISTORY

PL 1989, C. 802, §1 (NEW)

21-A §1125. TERMS OF PARTICIPATION

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. **A television advertisement purchased with these revenues must be closed-captioned when closed-captioning is available from the broadcasting station who will broadcast the advertisement.** The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2009, c. 105, §1 (AMD) .]